



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,975	03/01/2002	Jean-Louis H. Gueret	08048.0026-00	2195

22852 7590 06/24/2005

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER  
LLP  
901 NEW YORK AVENUE, NW  
WASHINGTON, DC 20001-4413

EXAMINER
----------

DOAN, ROBYN KIEU

ART UNIT	PAPER NUMBER
----------	--------------

3732

DATE MAILED: 06/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/084,975

Applicant(s)

GUERET, JEAN-LOUIS H.

Examiner

Robyn Doan

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-111 is/are pending in the application.
- 4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 14-16, 20-27, 33-51, 55, 61, 62, 64-72, 75-88, 91-104, 106 and 108-111 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

Continuation of Disposition of Claims: Claims withdrawn from consideration are 13,17-19,28-32,52-54,56-60,63,73,74,89,90,105 and 107.

## DETAILED ACTION

The indicated allowability of claims 14-16 and 55 is withdrawn in view of the newly discovered reference(s) to Ashtare et al. Rejections based on the newly cited reference(s) follow.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-111 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gueret (5937870) in view of Ashtary et al (5176156).

With regard to claims 1-5, 9, 22-27, 33-42, 96-98, 101-104 and 107-111, Gueret discloses a mascara brush (figs. 1-3) comprising a container (320) comprising a mascara product to apply to eyelashes, a wiper (321), a handle (323) attached to an end of a stem (101), a brush portion connected to one end portion of the stem (101.1), the one end of the stem having a longitudinal axis and a brush portion having a free end (104); the brush portion comprising a twisted wire core (103) having a left hand pitch (fig. 1d), at least part of the core being curved; the brush portion further having bristles of different lengths (fig. 1)

Art Unit: 3732

comprising ends defining an envelope surface being asymmetrical about a midplane of the envelope surface; the brush portion is formed from a blank comprising a blank core and blank bristles defining a blank surface, an edge of the blank surface being nonrectilinear and the rectilinear edge portion being outwardly concave (fig. 1e). With regard to claims 4-8, 10-12, 20-21, 51, 67-68, 83-84, 99-100, Gueret also discloses the blank envelope surface being substantially axially, circularly symmetrical about the longitudinal axis of the core, the envelope surface and the brush portion having a maximum and a minimum cross section locating between axial ends of the envelope surface and the brush portion, the nonrectilinear edge portion being located in one of the first third and a last third of the length of the blank envelope surface (figs. 1a, b). With regard to claims 64-66, 69-72, 75-82, 85-88, 91-95, Gueret '870 also discloses the envelope surface (129b) being noncylindrical proximate a free end (at 128b) of a brush portion (120). Gueret does not disclose the free end of the brush portion not being aligned with the longitudinal axis of the one end portion of the stem and the brush portion comprising a core having a core free end, at least part of the core being curved such that a line to the core at any axial position along the core is not perpendicular to the longitudinal axis of the one end portion of the stem and a longitudinal axis of the core free end is not parallel to the longitudinal axis of the end portion. Ashtray et al discloses a mascara brush (fig. 2) comprising a stem (16) with two opposite ends, a brush portion (32) connected to one end (at 34) portion of the stem and the one end portion of the stem having a longitudinal axis and the brush portion having a free end that is not aligned with the

Art Unit: 3732

longitudinal axis of the one end portion of the stem and the brush portion comprising a core having a core free end, at least part of the core being curved such that a line to the core at any axial position along the core is not perpendicular to the longitudinal axis of the one end portion of the stem and a longitudinal axis of the core free end is not parallel to the longitudinal axis of the end portion (fig. 2). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the particular brush portion as taught by Ashtary et al into the mascara brush of Gueret for the purpose of enhancing the ability of the device to curl the eyelashes. In regard to claims 43-50 and 61-62, the above apparatus is inherently seen in the existence method claims.

Claims 14-16 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gueret in view of Ashtare et al.

With regard to claims 14-16 and 55, Gueret in view of Ashtare et al disclose a mascara brush comprising all the claimed limitations in claims 1 and 43 except for the shape of the blank surface being frustoconical-shape, fish-like shape, hourglass-like shape. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to the shape of the blank surface being frustoconical-shape, fish-like shape, hourglass-like shape, since such a modification would have involved a mere change in the shape of the component.

Art Unit: 3732

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kindsford and Holland are cited to show the state of the art with respect to a mascara brush with a curved core.

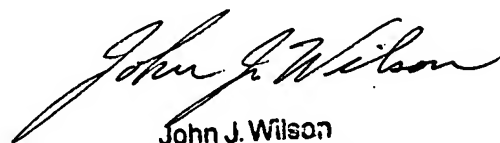
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robyn Doan  
June 21, 2005



John J. Wilson  
Primary Examiner